

LARRY BROWN & ASSOCIATES

IBLA 93-326

Decided January 19, 1995

Appeal from a decision of the Ashland Area Manager, Oregon, Bureau of Land Management, assessing \$886.14 in trespass liability for unauthorized use of BLM Road No. 37-4-4 (Birdseye Creek Road). OR 48700.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way—Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Permits—Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Rights-of-Way—Rights-of-Way: Generally—Trespass: Generally

Use of a road on Oregon and California Railroad and Reconveyed Coos Bay Grant lands for hauling logs before a permit is issued is a willful trespass under 43 CFR 2800.0-5(v).

2. Trespass: Generally—Trespass: Measure of Damages

Where the unauthorized use of a road over Oregon and California Railroad and Reconveyed Coos Bay Grant lands constitutes a willful trespass, liability is to be calculated in accordance with the regulations at 43 CFR 2801.3(b)(1) and (2) and (c)(2).

APPEARANCES: Lawrence F. Brown, Grants Pass, Oregon, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Larry Brown & Associates has appealed a November 19, 1992, decision by the Ashland Area Manager, Oregon, Bureau of Land Management (BLM), assessing \$886.14 in trespass liability for unauthorized use of 1 mile of BLM Road No. 37-4-4 (Birdseye Creek Road), in sec. 4, T. 37 S., R. 4 W., Willamette Meridian, Jackson County, Oregon.

On March 9, 1992, BLM received a letter from appellant requesting "an O & C [Oregon and California Railroad and Reconveyed Coos Bay Grant lands] Road Use Permit for the Gray Timber Sale." Accompanying that letter was a copy of a map depicting the "BLM road to be used." The file contains a copy of a letter to appellant from the Ashland Resource Area Office advising that an application form was attached and that it would take "30 days or longer to process your application." That copy contains a handwritten

date of "4/29/92." That date is apparently in error because appellant's application is dated March 22, 1992, and elsewhere in the file BLM stated that the application had been filed on March 22, 1992.

The file contains an "Initial Report of Trespass," dated July 20, 1992, indicating that as of July 10, 1992, the timber had "already been cut and hauled," although BLM had not issued a permit. By letter of August 24, 1992, the Ashland Area Manager informed appellant that unauthorized use of the road created a liability under 43 CFR 2812.1-3 and 43 CFR 2801.3 "for the payment of road use and maintenance fees that have accrued since the start of the trespass and reimbursement of administrative costs incurred by BLM in investigating and resolving the trespass."

According to a conversation record in the file, on August 28, 1992, appellant's office manager telephoned BLM advising that Larry Brown & Associates "got ahead of themselves and did the hauling before getting a permit." On August 31, 1992, appellant filed a letter and accompanying log tickets with BLM that between April 2 and April 29, 1992, a volume of 117,020 board-feet of timber were hauled over the Birdseye Creek Road. Appellant requested that it be billed for the "appropriate road use and maintenance fees for this volume."

Treating the case as a willful trespass, BLM calculated damages utilizing appellant's figure (117.02 Mbf) and the distance (1 mile) of road traversed. The total amount, \$886.14, included individual assessments for reimbursement of road use and road maintenance (\$253.92). A penalty assessment of two times these amounts was added because BLM considered the trespass willful. Also included in the total amount was \$124.35 in administrative costs.

On appeal, appellant asserts that it returned the application on March 22, 1992, but heard nothing from BLM until it received BLM's August 24, 1992, letter notifying it of the trespass. Appellant admits that it trespassed and asserts that it is willing to pay "the non-trespass amount of \$253.9[2]," but not \$886.14.

[1] BLM correctly found that appellant's trespass was willful. Under 43 CFR 2812.1-3, any use of O & C lands for tramroads without authorization is a trespass as defined in 43 CFR 2800.0-5. ^{1/} A trespass is "any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required * * *" (43 CFR 2800.0-5(u)). A willful trespass is a "voluntary or conscious trespass * * * not * * * an act made by mistake or inadvertence" (43 CFR 2800.0-5(v)). In this case, appellant filed an application for a permit. It did not receive a permit, yet it proceeded to utilize the road. In its reasons for appeal, it stated that "[w]e were unsure if the

^{1/} "Tramroads" are defined in the regulations to include "motor-truck roads to be used in connection with logging." 43 CFR 2812.0-5(f).

road was BLM or County because the landowner said it was county. We concluded that it was a county road because we heard nothing from the BLM." That explanation is unsatisfactory. Apparently, appellant made no effort to determine the status of its application before using the road. Proceeding without authorization was a voluntary or conscious act. Therefore, its trespass was willful. See Larry D. Olson, 126 IBLA 229, 230-31 (1993).

[2] The fee assessed by BLM includes reimbursement and penalties for willful trespass as authorized by 43 CFR 2801.3(b)(1) and (2) and (c)(2). Under 43 CFR 2801.3(b)(1) and (2), respectively, the trespasser is liable to the United States for reimbursement of all costs incurred in the investigation and termination of the trespass and for reimbursement of "the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM." In addition to those amounts, (c)(2) mandates "an amount that is 2 times the charges for road use, amortization, and maintenance which have accrued since the inception of the trespass."

Appellant points out no error in BLM's calculation of its liability and we find none.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43

CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

Franklin D. Arness
Administrative Judge